

REMARKS

Claims 1-19 and 22-34 are pending in this application. In the final Office Action dated May 6, 2004, the Examiner Lauren Wells withdrew her rejections under 35 U.S.C. §112, first and second paragraphs, as a result of amendments to the claims in Applicants' Response to Office Action dated December 15, 2003. Applicants thank the Examiner for her withdrawal of these amendments.

However, the Examiner maintained the following rejections under 35 U.S.C. § 103(a):

(a) claims 1-5, 10, 13-19, 22, 24, 28 and 31-34 as being obvious over Great Britain Patent Appl. No. 2347349 (Croft) and U.S. Patent No. 6,028,118 (Dupont et al.);

(b) claims 12, 26, 27, 29 and 30 as being obvious over Croft in view of Dupont et al. and further in view of U.S. Patent No. 6,255,295 (Henderson et al.);

(c) claims 9 and 23 as being obvious over Croft in view of Dupont et al. and further in view of Church (Velvet Antler: It's Historical Medical Use);

(d) claims 7, 8 and 25 as being obvious over Croft in view of Dupont et al. and further in view of U.S. Patent No. 5,843,919 (Burger); and

(e) claim 11 as being obvious over Croft in view of Dupont et al. and further in view of U.S. Patent No. 4,801,453 (Kosuge et al.).

In addition, the Examiner further rejected claims 1-2, 6, 15-19 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Croft in view of U.S. Patent No. 6,333,304 (Bath et al.). According to the Examiner, Bath teaches treatment for arthritis and the use of bark extract for treating inflammation. The Examiner states that it would have been obvious to one of ordinary skill in the art to add the pine bark extract of Bath et al. to the composition of Croft because it is obvious to combine two compositions taught by the prior art to be useful for the same purpose to form a third composition that is to be used for the very same purpose. Additionally, the Examiner contends that it would have been obvious to add the pine bark extract of Bath et al. to the composition of Croft because of the expectation of stopping the deterioration of the joint, quelling inflammation, and stopping free radical damage.

In response, Applicant points out to the Examiner that Great Britain Patent Appl. No. 2347349 (Croft) is not prior art to the present application and should not have been used in rejections of the claims hereof. Croft, which is a foreign patent application, published on September 6, 2000 and is thus effective as a reference only as of that date (see Manual of Patent Examining Procedure § 2126, 2128). However, the present patent application was filed as International Patent Application No. PCT/NZ00/00135 on July 21, 2000 (based upon New Zealand patent Application No. 500630, filed July 21, 1999) and thus has an effective filing date of July 21, 2000 (see 35 U.S.C. § 363 and Manual of Patent Examining Procedure § 1893.03(b)). Because the July 21, 2000 effective filing date of this application is earlier than the publication date of the Croft reference, Croft is not prior art to the present application. Accordingly, because all of the rejections use the Croft reference as their primary reference, all of the rejections must be withdrawn.

In teleconferences with Supervisory Examiner Sreeni Padmanabhan and new Examiner Shenjun Wang on August 23 and 24, respectively, for which the undersigned attorney thanks the examiners, the undersigned attorney for Applicants discussed whether this response should be filed as a response to the final Office Action under 37 C.F.R. § 1.116 or as an Amendment to be filed with a Request for Continued Examination. Applicants' undersigned attorney was informed that the Examiners would allow submission of this response as a response to the final Office Action under 37 C.F.R. § 1.116 and that an RCE fee is not required. However, in order to preserve Applicants' rights and prevent inadvertent abandonment of this application, Applicants herewith file a Notice of Appeal, along with the fee for Notice of Appeal, concurrently with this Response.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejections of claims 1-19 and 22-34 as applied above and pass claims 1-19 and 22-34 to allowance.

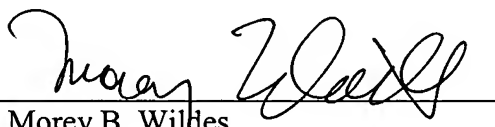
Conclusion

According to currently recommended U.S. Patent and Trademark Office policy, the Examiner is specifically authorized to contact the undersigned in the event that a telephone interview would advance the prosecution of the case.

Reconsideration of the present application, as amended, is requested. Applicants respectfully submit that all the claims pending in this application are patentable. An early and favorable action on the merits is earnestly solicited.

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Respectfully Submitted,
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